

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

MVM, INC.

Employer

and

OBAFEMI ALOBA

Case 05-RD-143548

Petitioner

and

UNITED SECURITY & POLICE OFFICERS OF
AMERICA (USPOA)

Union

and

NATIONAL LEAGUE OF JUSTICE AND SECURITY
PROFESSIONALS

Intervenor

and

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (hereinafter “the Act”), as amended, a hearing on the petition was held on January 13, 2015 before a hearing officer of the National Labor Relations Board (hereinafter “the Board”). The Employer, MVM, Inc. (hereinafter “the Employer”), the Petitioner in Case 05-RD-143548,

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Obafemi Aloba (hereinafter “Aloba”), the Incumbent Union (which also intervened in Case 05-RC-143623), the United Security & Police Officers of America (USPOA) (hereinafter “USPOA”), a second Intervenor in both Case 05-RD-143548 and Case 05-RC-143623, the National League of Justice and Security Professionals (hereinafter “NLJSP”), and the Petitioner in Case 05-RC-143623 (which also intervened in Case 05-RD-143548), the International Union, Security, Police and Fire Professionals of America (SPFPA) (hereinafter “SPFPA”) appeared at the hearing. USPOA represents a collective-bargaining unit (hereinafter “the Unit”) consisting of approximately 446 full-time and regular part-time security officers employed by the Employer and assigned to the following location of the National Institute of Health operations: Bethesda, Poolsville, Gaithersburg, Rockville, and Baltimore, Maryland, pursuant to its current and follow-on service contracts with the government for the provision of security services at said facilities; but excluding all office and clerical employees, managers, professional employees, temporary employees, substitute employees, non-security employees, and supervisors as defined by the Act. Aloba seeks to decertify USPOA as the collective-bargaining representative of the employees in the Unit. After the hearing in these matters adjourned, SPFPA requested to withdraw the representation petition it filed in Case 05-RC-143623. I approved this withdrawal on January 22, 2015, thus the only matter before me is the decertification petition filed by Aloba in Case 05-RD-143548, in which SPFPA and NLJSP intervened and USPOA is the incumbent union.

The parties stipulated, and I find, that USPOA, NLJSP, and SPFPA is each a labor organization within the meaning of Section 2(5) of the Act, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,¹ and that both

¹ The parties stipulated that, and I find, the Employer, a California corporation with an office and a place of business in Ashburn, Virginia, is engaged in the business of providing security services, and, in conducting its

parties are therefore subject to the jurisdiction of the Board. The parties also stipulated, and I find, that that the unit described in the instant petition is an appropriate unit, that there is a history of collective-bargaining involving the petitioned-for unit, USPOA, and the Employer, and there is a collective-bargaining agreement between the Employer and USPOA, effective from August 8, 2012 through February 28, 2015.

I. ISSUES, POSITIONS OF PARTIES, AND DETERMINATION

The Employer, Aloba, SPFPA, and NLJSP each indicated during the hearing that there were no issues to litigate. On the other hand, USPOA raised three issues at the hearing concerning the following: (a) that the showing of interest for Case 05-RD-143548 and the showing of interest for Case 05-RC-143623 were both insufficient; (b) that the president of NLJSP had allegedly used USPOA letterhead fraudulently in communicating with employees and employers; and (c) that the representation petition in Case 05-RC-143623 is untimely. In its post-hearing brief, USPOA argued that its allegation that NLJSP engaged in fraud was the basis for asserting that NLJSP should not be permitted to intervene in either of the above-captioned cases.

Based on the record as a whole,² and careful consideration of the arguments of the parties at hearing and in brief,³ I find that a question concerning representation exists and I direct that an election be held for the petitioned-for bargaining unit. I reject each of the issues raised by

operations during the past twelve months, the Employer performed services valued in excess of \$50,000 in states other than the state of Virginia.

² No party called a witness or introduced documentary evidence into the record. The parties stipulated to the admission of the Board's formal papers, as well as other stipulations described above.

³ Each party, with the exception of SPFPA, waived the filing of briefs, though USPOA indicated its intent to seek a 14-day extension to file a brief, which it subsequently sought from me by means of a written request. Subsequently, USPOA filed a brief on January 20, 2015. I thus deny its earlier request for an extension as moot.

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USPOA as an impediment to an election as either inappropriate for litigation in a pre-election representation hearing, factually misplaced, or moot.

Regarding USPOA's first issue, it is well-settled that a party in a representation case may not litigate the sufficiency, validity, or authenticity of the showing of interest at a hearing. *River City Elevator Co.*, 339 NLRB 616 (2003); *General Dynamics Corp.*, 175 NLRB 1035 (1969); *O.D. Jennings & Co.*, 68 NLRB 516 (1946). The determination of the sufficiency of the showing of interest is purely an administrative matter, wholly within my discretion and not dispositive as to whether a question concerning representation exists. *Sheffield Corp.*, 108 NLRB 349, 350 (1954).

As for USPOA's second issue, it is not clear to me, upon my review of the record and USPOA's brief, as to exactly what USPOA's contention is: whether USPOA is contending that NLJSP: (a) fraudulently obtained its showing of interest; (b) engaged in conduct that has a tendency to interfere with employees' freedom of choice in a representation election; or (c) should not have been permitted to intervene. If USPOA is raising an argument concerning a showing of interest, then I reject its argument on the basis that a party in a representation case hearing may not litigate the sufficiency of the showing of interest, as I described above. If USPOA is arguing that NLJSP engaged in fraudulent conduct that has a tendency to interfere with employees' freedom of choice, I view such an argument as premature and inappropriate for a pre-election representation hearing, as the question is whether USPOA may have engaged in conduct that interfered with an election that has not yet occurred. Such a question does not implicate whether a valid question concerning representation exists, the core inquiry in a pre-election representation hearing. Finally, if USPOA is contending that NLJSP should not be permitted to intervene, I conclude that USPOA has waived any such argument by its failure to

clearly raise that issue during the hearing. USPOA failed to object to NLJSP's status as an Intervenor in either case at the beginning of the hearing, nor did USPOA seek to appeal from the hearing officer's implicit ruling that NLJSP was permitted to intervene in each of the above-captioned cases.⁴

As for USPOA's final argument that the petition in Case 05-RC-143623 is untimely, I find it to be moot. At hearing, USPOA only raised an issued regarding the timeliness of the representation petition in Case 05-RC-143623, filed by SPFPA. As SPFPA has subsequently requested to withdraw its petition, and I have approved that request, I find USPOA's argument concerning the timeliness of the representation petition to be moot, and I consider it unnecessary to evaluate the merits of USPOA's argument on the point.

II. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is a California corporation with an office and place of business in Ashburn, Virginia, and is engaged in the business of providing security services. In conducting

⁴ To the extent that USPOA is now claiming that NLJSP should not be permitted to intervene, or should be struck as an Intervenor, because NLJSP engaged in fraud to obtain its showing of interest, I reject its argument. As I discussed above, determinations concerning a party's showing of interest are purely an administrative matter and not litigable in a representation case proceeding. *S. H. Kress & Co.*, 137 NLRB 1244, 1248-49 (1962). A party contending that a showing of interest was obtained by fraud should submit its evidence of fraud to the appropriate Regional Director. *Perdue Farms, Inc.*, 328 NLRB 909 (1999). Moreover, a party making such an argument needs to do so in a timely fashion, "only at or around [when] the petition is filed." *Community Affairs, Inc.*, 326 NLRB 311 (1998).

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its operations during the past 12 months, the Employer performed services valued in excess of \$50,000 in states other than the state of Virginia.

3. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

4. The United Security & Police Officers of America (USPOA) is a labor organization as defined in Section 2(5) of the Act.

5. The National League of Justice and Security Professionals is a labor organization as defined in Section 2(5) of the Act.

6. The International Union, Security, Police and Fire Professionals of America (SPFPA) is a labor organization as defined in Section 2(5) of the Act.

7. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 2(6) and (7) of the Act.

8. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers employed by the Employer and assigned to the following location of the National Institute of Health operations: Bethesda, Poolesville, Gaithersburg, Rockville, and Baltimore, Maryland, pursuant to its current and follow-on service contracts with the government for the provision of security services at said facilities; but excluding all office and clerical employees, managers, professional employees, temporary employees, substitute employees, non-security employees, and supervisors as defined by the Act.

III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they

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wish to be represented for purposes of collective bargaining by the United Security & Police Officers of America (USPOA), the National League of Justice and Security Professionals, the International Union, Security, Police and Fire Professionals of America (SPFPA), or none of the above. The date, time, and manner of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list

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of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election. To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before January 30, 2015. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Consistent with the Agency's E-Government initiative, parties are encouraged to file an eligibility list electronically. If the eligibility list is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Filing an eligibility list

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electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the eligibility list rests exclusively with the sender. A failure to timely file the eligibility list will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

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Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on February 6, 2015, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁵ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

⁵A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

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not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

Dated: January 23, 2015

/s/ Charles L. Posner

Charles L. Posner, Regional Director
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